

Remarks

Claims 26 - 50 remain pending in the application with claims 26, 36, and 42 in independent form.

Claims 26 - 50 stand rejected under the doctrine of obviousness-type double patenting based on related U.S. Patent Nos. 6,151,984 and 6,374,695. As noted by the Examiner, a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome this rejection. A terminal disclaimer is being submitted herewith such that this double patenting rejection is believed overcome.

Claims 26 - 50 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huff et al. (U.S. Patent No. 2,860,720) in view of French Patent No. 2 739 947. In particular, the Examiner contends that it would have been obvious to one of ordinary skill in the art to have utilized the electric signal generator of the French Patent "between the pedals and support structures of Huff et al.". Applicant respectfully disagrees with the Examiner regarding this obvious determination.

As discussed during the interview of December 11, 2003 and in Applicant's previous Amendment of October 30, 2003, the prior art of record is replete with examples of adjustable pedal assemblies without electrical generators, fixed pedal assemblies with electrical generators, and even adjustable pedal assemblies with electrical generators. As recognized by the Examiner, Huff et al. is an example of an adjustable pedal assembly without an electrical generator. The French Patent is an example of an adjustable pedal assembly with an electrical generator.

The prior art of record, however, fails to disclose, teach, or suggest the unique structure of the subject invention as claimed in each of the independent claims. In particular, the prior art fails to disclose the novel and non-obvious combination of an adjustable pedal assembly having:

- a pedal pivotally supported about a first pivot axis,
- an adjustment element pivotally supported about a second pivot axis,
- the first pivot axis supporting the pedal on the adjustment element,
- the adjustment element selectively moving the pedal between a plurality of operable positions without pivotally rotating the pedal about the first pivot axis,

- the second pivot axis of the adjustment element remaining fixed during the movement of the pedal between the operable positions,
- an electrical generator (or electric output control) responsive to rotation of the pedal as the pedal rotates between rest and applied positions about the first pivot axis, and
- the rotation of the pedal between the rest and applied positions being independent of the movement of the pedal between the operable positions by the adjustment element.

The unique adjustable pedal assembly outlined above, and more specifically claimed in independent claims 26, 36, and 42, is not found nor taught by the prior art of record, including Huff et al. and the French Patent, either alone or in combination.

Many of the prior art adjustable pedal assemblies, such as those found in Huff et al., do not disclose or suggest the incorporation of an electrical generator. Combining the French Patent with Huff et al. in an attempt to find the limitations set forth in independent claims 26, 36, and 42 requires a significant and improper modification of Huff et al. thereby evidencing an improper motivation to combine.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. See MPEP 2143.

As a significant subset to the criterion related to suggestion or motivation to modify the references, it is well settled that a proposed modification to a reference cannot render the reference unsatisfactory for its intended purpose. Further, the proposed modification cannot change the principle of operation of the reference. See MPEP 2143.01. Applicant contends that combining the French Patent with Huff et al. would render Huff et al. unsatisfactory for its intended purpose and, in fact, would render Huff et al. wholly inoperable. Applicant also contends that the principle operation of Huff et al. would be changed if the French Patent was combined with Huff et al. As such, Applicant contends that there is no suggestion or motivation to modify Huff et al. and there is no suggestion or motivation to combine the French Patent with Huff et al. such that the subject invention is NOT obvious.

In order to demonstrate to the Examiner the operation of Huff et al., the improper modification that would render Huff et al. inoperable, and the improper motivation to combine, applicant refers the Examiner to the following;

- The Huff et al. patent - U.S. Patent No. 2,860,720 (Exhibit 1),
- A Declaration under 37 CFR § 1.132 by the inventor Mattias Johansson (Exhibit 2),
- A Declaration under 37 CFR § 1.132 by an independent expert Clark Radcliff (Exhibit 3), and
- An animation of Huff et al. (Exhibit 4).

As shown in the solid/phantom lines in Figures 1 - 2 of the Huff et al. patent (Exhibit 1), Huff et al. discloses an adjustable pedal assembly having an accelerator pedal 62 and a brake pedal 60 that pivot about respective pivot axes 64. Each of the pivot axes 64 are analogous to the first pivot axis of the subject invention. Actuation rods 66 are connected to the accelerator 62 and brake 60 pedals for actuating a throttle control and braking device, respectively, during the pivoting of the pedals 62, 60 about the pivot axes 64. Huff et al. also includes an adjustment element 42 for moving the pedals 62, 60 between operative positions. The adjustment element 42 is in the form of a foot plate and pivots about a pivot axis 48. The pivot axis 48 is analogous to the second pivot axis of the subject invention. This undisputed interpretation of Huff et al. is confirmed by the inventor, see the Johansson Declaration (Exhibit 2) at paragraph 5, and by the independent expert, see the Radcliff Declaration (Exhibit 3) at paragraph 5.

During the adjustment of the pedals 62, 60, Huff et al. requires that both the accelerator 62 and brake 60 pedals pivot about their respective pivot axes 64. The pivoting of the pedals 62, 60 is necessary to ensure that the pedals 62, 60 will not actuate respective actuation rods 66 during adjustment. Clearly, the actuation rods 66 cannot move during the adjustment of the pedals 62, 60. If the actuation rods 66 did move, then the vehicle would accelerate, brake, or do both during the adjustment of the pedals 62, 60. This interpretation of Huff et al. is confirmed by the inventor, see the Johansson Declaration (Exhibit 2) at paragraphs 6 - 7, and by the independent expert, see the Radcliff Declaration (Exhibit 3) at paragraphs 6 - 7.

As mentioned above, the Examiner contends that it would have been obvious to one of ordinary skill in the art to have utilized the electric signal generator of the French Patent “between the pedals and support structures of Huff et al.”. Positioning an electrical generator, such as the one disclosed in the French Patent, to be responsive to one or more of the pedals 62, 60 of Huff et al. would render the adjustable pedal assembly of Huff et al. wholly inoperative, i.e., unsatisfactory for its intended purpose. Recall that the pedals 62, 60 must pivot during adjustment between the operative positions. As such, the electrical generator, which would be mounted to the respective pivot axis 64, would sense the required pivoting of the pedals 62, 60 during the adjustment of the pedals 62, 60 between the operative positions. Hence, the vehicle would accelerate, brake, or do both during the adjustment of the pedals 62, 60. Having the vehicle accelerate, brake, or do both during the adjustment of the pedals 62, 60 clearly renders the adjustable pedal assembly of Huff et al. unsatisfactory for its intended purpose and likewise renders this adjustable pedal assembly wholly inoperative. This interpretation of Huff et al. is further confirmed by the inventor, see the Johansson Declaration (Exhibit 2) at paragraph 9, and by the independent expert, see the Radcliff Declaration (Exhibit 3) at paragraphs 9-10.

Further, as described above, the proposed modification (placing an electrical generator on Huff et al.) cannot change the principle of operation of Huff et al. One principle operation of Huff et al. is having the pedals 62, 60 pivot during adjustment. Hence, the Examiner cannot properly argue that the pedals 62, 60 don’t have to pivot during adjustment. The pedals 62, 60 are required to pivot and this design feature cannot be changed. As discussed above, if the pedals 62, 60 were not allowed to pivot during adjustment, which improperly modifies the design, then the pedals 62, 60 would actuate respective actuation rods 66, which in turn would actuate a throttle control and/or a braking device of the vehicle.

Referring to the animation of Huff et al. (Exhibit 4), this animation illustrates the movement of the actuation rods during adjustment of the pedals if the pedals did NOT pivot. The animation is being used for demonstration purposes and the following is a description of the animation. The animation is sixty-one seconds long and begins with a perspective view of the adjustable pedal assembly of Huff et al. The animation then

proceeds into a colored side view of the adjustable pedal assembly. The animation transitions into an enlarged view of the pedals and the accelerator pedal is pivoted about its pivot axis, which moves the associated rod. The animation returns to the colored side view and illustrates the adjustment of the pedals by moving the adjustment element. During this adjustment, the pedals are NOT pivoted, such that the rods move with the pedals and the adjustment element. As discussed above, the movement of the rods would certainly actuate the respective throttle control and braking device. The animation then concludes. To reiterate once again, the movement of the actuation rods 66, as shown in the animation, would cause the vehicle to accelerate, brake, or do both during the adjustment of the pedals 62, 60. This interpretation of the animation of Huff et al. is confirmed by the inventor, see the Johansson Declaration (Exhibit 2) at paragraph 8, and by the independent expert, see the Radcliff Declaration (Exhibit 3) at paragraph 8.

The subject invention, as claimed, requires that an adjustment element move a pedal between a plurality of operable positions *without pivotally rotating the pedal about a first pivot axis*. Also, the independent claims require that *the movement of the pedal between operable positions by the adjustment element be independent of the rotation of the pedal between rest and applied positions*. As such, the electrical generator of the subject invention does not sense any rotation of the pedal about the first pivot axis during the adjustment of the pedal about the second pivot axis. This creates a novel and non-obvious design improvement that is not found or suggested by the prior art of record. As such, the invention, as now claimed, is believed to be novel and non-obvious over the adjustable pedal assemblies without electrical generators either alone or in combination with any of the other cited references.

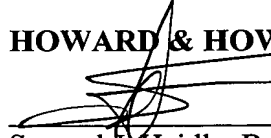
As a final matter, each of the prior art references cited to the Examiner have been reviewed and the Applicant contends that none of these references, either independently or in combination, disclose or suggest the unique and non-obvious assemblies of claims 26, 36, and 42. As such, these claims are allowable. Claims 27-35, 37-41, and 43-50 are also allowable as these claims depend from independent claims 26, 36, and 42, respectively.

It is respectfully submitted that the Application, as amended, is now presented in condition for allowance, which allowance is respectfully solicited. The Commissioner is authorized to charge our Deposit Account No. 08-2789 for any fees or credit the account for any overpayment.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.


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CERTIFICATE OF MAILING

I hereby certify that the attached **Response** is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the **Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450**, on **April 16, 2004**.



Brenda J. Hughes

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